

(Counsel of Record on Next Page)

**UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA**

ROBERT RUNNINGS, individually,  
and on behalf of all others similarly  
situated,

Plaintiffs,

vs.

DOLLAR TREE STORES, INC.

Defendant.

**Case No.: C-07-4012 SC**

**CLASS ACTION**

**JOINT CASE MANAGEMENT  
CONFERENCE STATEMENT AND  
[PROPOSED] ORDER**

Date: Nov. 16, 2007  
Time: 10:00 a.m.  
Judge: Hon. Samuel Conti  
Courtroom: 1, 17<sup>th</sup> Floor

MIGUEL A. CRUZ and JOHN D.  
HANSEN, individually, and on behalf  
of all others similarly situated,

Plaintiffs,

vs.

DOLLAR TREE STORES, INC.

Defendant.

**Case No.: C-07-02050 SC (Related Action)**

**CLASS ACTION**

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16 Attorneys for Defendant  
17 Dollar Tree Stores, Inc.

1 Representative Plaintiff Robert Runnings (“Plaintiff”), individually, and as putative class  
2 representative, and defendant Dollar Tree Stores, Inc. (“Dollar Tree”) jointly submit this Case  
3 Management Statement and Proposed Order and request that the Court adopt the proposed Order  
4 as its Case Management Conference Order.

5 1. Jurisdiction and Service: Plaintiff Robert Runnings filed this lawsuit in California  
6 Superior Court, County of Alameda, on July 6, 2007. This matter was removed to the Northern  
7 District Court on August 6, 2007. Defendant contends that this Court has jurisdiction over this action  
8 pursuant to 28 U.S.C. § 1332. All parties herein have been served.

9 2. Facts: Plaintiff alleges that he and all remaining putative class members (Dollar Tree  
10 retail store managers) were misclassified by defendant Dollar Tree as overtime “exempt” employees,  
11 and therefore denied overtime pay, wages for missed rest and meal breaks and related penalties.  
12 Defendant disputes these claims. Notably, an action against Dollar Tree on identical facts was  
13 brought and resolved through settlement by this plaintiff’s counsel several years prior to the filing  
14 of the instant action.

15 Dollar Tree denies that any of its employees were improperly classified as exempt from  
16 overtime, denies the violation of any other state laws in the payment of wages or the issuance of  
17 wage statements, and denies any failure to provide meal and rest break periods. Dollar Tree asserts  
18 that the responsibilities held by its store managers in directing the operations of an entire store and  
19 supervising all store employees are clearly managerial functions exempt from overtime and  
20 attendant wage hour requirements under applicable law. Dollar Tree denies any violation of any  
21 rights held by its employees. As described below, Dollar Tree denies that this case is appropriately  
22 brought as a class action because, inter alia, the amount of time spent on exempt/non-exempt  
23 functions, an inquiry raised in the Plaintiff’s complaint, is an inherently individualized inquiry.

24 3. Legal and Factual Issues in Dispute: The parties identify one of the principal legal  
25 and factual issues in dispute as being whether Plaintiff and the putative class were properly  
26 classified, under California state law, as overtime-exempt employees.

27 Defendant further identifies the following areas of dispute:  
28

1 a. Whether the store managers' duties were such that they were properly exempted  
 2 from the payment of overtime under California law. This fact issue is the core issue for several of  
 3 Plaintiff's claims for relief which are dependent upon the exemption question. Those derivative  
 4 claims are:

- 5 (1) The UCL Claim (First Cause of Action)
- 6 (2) A claim for failure to pay all wages at the time of termination (Second Cause  
 7 of Action)
- 8 (3) A claim for meal and rest period violations (Third Cause of Action)
- 9 (4) A claim involving the nature of the wage statements received by store  
 10 managers (Fourth Cause of Action)

11 b. Whether the issue of each California store manager's performance of exempt duties  
 12 (and the time spent in such performance) during the relevant time period is an individualized inquiry  
 13 such that a class cannot be certified.

14 c. The amount of damages, if any.  
 15 Defendant further identifies the following legal issues:

- 16 a. What are the legal standards for an executive exemption and how do those legal  
 17 standards apply in this case.
- 18 b. Whether Plaintiffs may bring this case as a class action under Rule 23 of the Federal  
 19 Rules of Civil Procedure.
- 20 c. Whether Plaintiffs may bring this case as a class and/or representative action under  
 21 Business & Professions Code Section 17200, et. seq.
- 22 d. What is the appropriate period for alleging a class action in this case in light of of the  
 23 Settlement in *Williams v. Dollar Tree Stores, Inc.* (California Orange County  
 24 Superior Court No. 01CC00329).<sup>1</sup>
- 25 e. Whether Plaintiffs are entitled to monetary relief, including but not limited to

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 27 <sup>1</sup> In *Williams v. Dollar Tree Stores, Inc.* Case No. 01CC00329 (Orange County  
 28 Superior Court), Dollar Tree resolved a similar lawsuit, which covered a period  
 through December 11, 2004.

1 damages, restitution, and/or punitive damages.

2 4. Motions and Applications

3 a. Prior Motions or Applications:

4 (1) On August 6, 2007, Defendant filed an *ex parte* application for a  
5 Temporary Restraining Order in an effort to prevent Plaintiff's counsel from communicating with  
6 potential class members. The Hon. Phyllis J. Hamilton denied Defendant's application after a  
7 hearing on August 8, 2007.

8 (2) On August 15, 2007, Defendant filed an administrative motion to have  
9 this matter related to *Miguel A. Cruz and John D. Hansen v. Dollar Tree Stores, Inc.*, Case No. C-  
10 07-02050 ("*Cruz*"), an action currently pending before this Court. Plaintiff did not oppose that  
11 motion. On August 31, 2007, the Court granted the motion to relate the cases.

12 b. Pending Motions: None as of the current date.

13 c. Anticipated Motions: The parties are currently meeting and conferring with  
14 regard to whether the above-captioned matter should be formally consolidated with the *Cruz* matter.  
15 Plaintiff Runnings believes consolidation would facilitate the prosecution, defense and judicial  
16 management of both cases. Defendant has neither agreed to, nor rejected, Plaintiff's request for  
17 consolidation. Absent a stipulation to consolidate these related matters, Plaintiff's counsel will bring  
18 and/or join a motion to consolidate the actions.

19 Before deciding to what extent, if any, Defendant will agree to consolidation, Plaintiff must  
20 make a proposal on this matter. Defendant object to a complete consolidation of the two cases. It  
21 is anticipated that the parties, at the upcoming CMC, will inform the Court of whether a stipulation  
22 to consolidation will be forthcoming or whether the Plaintiffs will be filing an opposed motion to  
23 consolidate.

24 The Parties anticipate motions relating to class certification/decertification issues. Defendant  
25 anticipates a motion for summary judgment regarding Plaintiffs' individual claims.

26 5. Amendment to the Pleadings: There have been no amendments to the pleadings.  
27 Plaintiff's counsel may seek to amend the Complaint to add additional class representatives if  
28 deemed necessary. Plaintiff believes it is premature to establish a cut-off date for amendment to the

1 pleadings.

2 Defendant asks that the Court prohibit further amendment to the pleadings.

3 6. Evidence Preservation: Dollar Tree has maintained an internal records hold with  
4 respect to this case since the initiation of the litigation. Plaintiff has, likewise, preserved all relevant  
5 evidence relating to the subject matter of this litigation. On October 19, 2007, plaintiffs' and defense  
6 counsel in *Cruz* stipulated to and obtained a Protective Order regarding the use of Defendant's  
7 alleged confidential and/or proprietary information, a Stipulation negotiated, in part, by plaintiff  
8 Runnings' counsel. All parties to both related actions understand that this Protective Order would  
9 also apply in the *Runnings* matter. Defendant negotiated the *Cruz* Protective Order with Runnings'  
10 counsel because it was requested to do so by Mr. Scott Cole, counsel for Mr. Runnings.

11 7. Initial Disclosures: The parties have served their Initial Disclosures.

12 8. Discovery:

13 a. Plaintiff's Proposal: Plaintiff Runnings believes that establishing a formal  
14 discovery plan at this juncture would be premature, given the likelihood of consolidation of his  
15 claims with those alleged in the *Cruz* action and requests that the Court allow the Plaintiffs in these  
16 actions to seek consolidation before any discovery timetables be set.

17 Regardless of the outcome of consolidation efforts, however, Plaintiff believes that, while  
18 merits adjudications need not be made at the point of class certification, there exists substantial  
19 cross-over between merits and class certification issues, such that bifurcating discovery would lead  
20 to duplicative efforts by all counsel, a waste of judicial and the parties' resources and the incurrence  
21 of unnecessary delay. Moreover, to the extent that defendant may argue that individual  
22 determinations predominate over common issues, Plaintiff believes he should be permitted to  
23 discover what those alleged individual issues are prior to bringing his anticipated motion for class  
24 action treatment. Finally, to the extent that the parties can discover facts that would aid in their  
25 respective evaluation of the case on the merits, such could facilitate early settlement of claims.

26 As such, Plaintiff would oppose bifurcation of class certification from merits related  
27 discovery issues.

1           b.     Dollar Tree's Proposal: Defendant proposes that discovery should be conducted in  
2 two phases with the first phase involving discovery related to Plaintiffs' individual claims and the  
3 propriety of class certification, and the second phase involving the merits of the class claims. There  
4 is no reason to conduct the wide-ranging discovery Plaintiff proposes unless and until a class is  
5 certified. Nor is it proper to confuse certification issues with merits issues. Indeed, Plaintiff fails to  
6 identify any specific areas of "substantial cross-over." Rather than conserving resources, Plaintiff's  
7 proposal would require that all involved engage in what might very well be needless work.

8           9.     Class Action: Plaintiff believes that membership in the proposed class, as defined in  
9 the Complaint, is ascertainable and that there exists a well-defined community of interest in the  
10 litigation. The class consists of all California Dollar Tree retail stores managers, employed thereby  
11 over a four-year period. The claims brought on their behalf are not unique; they involve the alleged  
12 misclassification of class members as "exempt" from California's liberal overtime scheme, based  
13 upon the executive exemption, the same affirmative defense raised when Dollar Tree defended a  
14 similar action brought several years ago. Plaintiff envisions no management difficulties in this  
15 litigation whatsoever. Defendant denies that this action is maintainable as a class action under Rule  
16 23.

17           Defendant disputes that this case is properly maintainable as a class action as there are many  
18 individualized questions relating to a determination of liability including, but not limited to, issues  
19 of the expected work responsibilities relative to the size, location, sales volume, merchandise sold,  
20 number of employees and other distinguishing factors among stores; issues relating to what the store  
21 managers actually do on a day to day basis, and, if there are variations, why they occur; issues  
22 relating to the percentage of time each store manager spends each day on exempt functions (Dollar  
23 Tree expects store managers to spend more than 50 % of their work time in managing the store  
24 operations and store employees); issues relating to individualized store manager practices regarding  
25 availing themselves of meal and break periods; and other individualized inquiries that relate to  
26 liability issues.

27           Dollar Tree does not agree with the alleged class period as it conflicts with a prior class  
28 settlement (Dollar Tree vigorously contested the allegations in the earlier Williams case, did not

1 admit liability in the terms of the settlement, and made significant efforts to reaffirm the exempt  
2 nature of store managers' work following entering into such settlement). Given the Williams  
3 settlement, in Defendant's view, the class period cannot go back earlier than December 11, 2004.  
4 The Complaint seeks to recover for a time period going back to July 2003.

5 Finally, Defendants believe that there may be significant issues of the adequacy of  
6 representation on the part of the named Plaintiffs and/or Plaintiffs' counsel which will be developed  
7 as discovery progresses.

8 10. Related Cases: This matter was deemed related to the *Cruz* matter, also currently  
9 assigned to this Court. *Cruz*, like *Runnings*, is a class action alleging, *inter alia*, that Dollar Tree  
10 illegally failed to pay overtime wages to its California retail store managers. The Complaint was  
11 filed on April 10, 2003, approximately three months prior to the underlying action. The cases were  
12 related August 31, 2007. As noted, *supra*, Plaintiff's counsel seeks consolidation of the two cases.

13 11. Relief:

14 a. Plaintiff's Request for Relief: Generally speaking, Plaintiff seeks an Order  
15 certifying the proposed class and, subsequently, an adjudication regarding the applicability of the  
16 executive exemption and an award of wages and penalties, fees and costs against Dollar Tree and  
17 injunctive relief.

18 b. Defendant's Request for Relief: Defendant seeks an Order denying  
19 certification of any class and, subsequently, an Order dismissing this lawsuit with prejudice and  
20 awarding Defendant its attorneys' fees and costs.

21 12. Settlement and ADR: Plaintiff is amenable to private mediation after sufficient  
22 discovery is complete to make such a process meaningful. Defendant proposed an Early Neutral  
23 Evaluation, which Plaintiff declined.

24 13. Consent to Magistrate Judge: The parties do not consent to have this matter heard  
25 before a magistrate judge.

26 14. Other References: The parties do not seek referral to arbitration, a Special Master,  
27 or other reference at this time.



1           15.    Narrowing of Issues: The parties' divergent positions on whether this action would  
2 benefit from use of class actions procedures will be disposed of through a motion therefor.

3           16.    Expedited Scheduling: Given the complex nature of this Class Action, the parties  
4 agree that this case should not be handled on an expedited schedule.

5           17.    Scheduling: The parties believe that any scheduling at this time be limited to setting  
6 a further Case Management Conference or ADR deadline.

7           18.    Trial: The parties believe that it is premature to set a trial date at this time given the  
8 need for extensive class certification related discovery, anticipated class certification and/or Notice  
9 proceedings, and the parties' interest in filing dispositive motions. Given the existence of class  
10 action allegations in the Complaint, it would be premature to estimate the length of trial. Plaintiff  
11 requests a jury trial. Defendant does not request a jury trial.

12           19.    Disclosure of Non-Interested Entities or Persons: Defendant filed a Certification of  
13 Interested Entities or Persons on August 6, 2007 stating Dollar Tree shareholders as interested  
14 parties.

15  
16  
17 Dated: November 9, 2007

**SCOTT COLE & ASSOCIATES, APC**

18  
19                   /s Carrie S. Lin  
20 Carrie S. Lin, Esq.  
21 Attorneys for the Plaintiff and the Plaintiff  
22 Classes

23  
24  
25 Dated: November 9, 2007

**KAUFF, McCLAIN & MCGUIRE, LLP**

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27                   /s Alex Hernaez  
28 Alex Hernaez, Esq.  
Attorneys for Defendant

**[PROPOSED] ORDER**

The Case Management Statement and Proposed Order is hereby adopted by the Court as the Case Management Order for the case and the parties are ordered to comply with this Order.

Dated: November \_\_\_\_, 2007

By:

\_\_\_\_\_  
Hon. Samuel Conti  
United States District Court Judge